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Comparison of Compulsory Liability Insurance of Tax Advisors in Poland to the Czech Counterpart

Abstract

This paper aims to assess the adequacy of obligatory tax advisors' insurance to meet their needs in Poland and Czechia using the comparative-legal method. It is crucial, due to the need to protect the weaker party in a transaction and provide certainty in trading. The comparison is made between legislation concerning compulsory liability insurance for tax advisors and the general contracts negotiated by professional self-governing bodies. The Polish product is characterised by mandatory coverage and private initiative. Like other compulsory insurance, this product is more accessory than voluntary insurance because the insurer also provides protection in case of damage caused by gross negligence. In that insurance, there are no limitations of a financial nature (deductible, integral, and deductible franchise) on the liability of insurance companies. Consequently, the insurance company's liability is even more similar to the insured's. The reduction of accessorality occurs only in regulated exclusions. The Czech legislator has only imposed the obligation to have this insurance without handling its details. The General Insurance Conditions regulate the remaining matter. The analysis indicated that the Polish regulations provide more complete protection. However, they require some modernisation— an increase in the sum assured (10,000 EUR is too low) or how it is calculated. Results show faults in existing Polish regulations and indicate ways to improve them.

Keywords

obligatory insurance | liability insurance | tax advisor | regulations | adequacy assessment

JEL Codes

G22, G28, H32

1. Introduction

Nowadays, scientific developments and intensive changes in tax law are not positively impacting tax advisors' working conditions. Their work is becoming increasingly difficult and, as a result, the risk of making mistakes is increasing. That results in the need to protect clients against the consequences of errors. The analytical studies carried out indicate the degree of adequacy of the sums insured, as well as the potential risks against which this profession is protected. The assessment of adequacy has been made by analysing the insurance portfolios of tax advisors related to the protection against possible losses.

The article analyses and compares the obligatory insurance of tax advisors in Poland and the Czech Republic from the point of view of adequacy to the needs of tax advisors. These countries were chosen because of their similar histories: both are former

Eastern Bloc countries with similar levels of economic development, and the ways in which tax advice laws were regulated are also similar. Both in Poland and the Czech Republic, it is a mandatory condition for tax advisors to have insurance cover for their civil liability before starting their activities. No legitimate tax advisor can operate without it.

In addition, the comparison was made between the two insurance products (framework insurance agreements) – people and entities were obligated to take out an insurance contract, insurance subject-matters, and sums assured. Premium tariffs were also analysed, so that it was possible to compare not only the adequacy of the products in question but also their cost-effectiveness from an economic point of view. Comparing the regulations and particular sums guaranteed also made it possible to assess in which country tax advisors can better manage associated risks by insuring against damage.

Compulsory insurances are introduced for a number of reasons: protecting a perpetrator of the damage from the risk of large compensation payments; protecting the most important values (life, health, property of the victim); and sustaining confidence in a particular professional group. *Compulsory* means that the entity indicated in the legislation is obliged to purchase insurance coverage. However, it does not only relate to policyholders. If any insurance company offers this type of compulsory insurance, it cannot refuse to provide such a contract to any customer. The insurer is obliged to enter into insurance contracts with all entities seeking protection. The insurance companies can only discourage customers with high premiums (Maśniak, 2020, p. 20).

2. Literature Review

This study is part of the research on possible changes to the compulsory liability insurance for tax advisors in Poland. Much scientific work deals with the regulation of the conditions for the protection of tax advisors (Krywan & Kurczewska, n.d.). Moreover, most of analyses focus on the internal regulations of specific countries, e.g. Poland (Weremczuk, 2019) and the Czech Republic (Kubíková, 2018). The following articles separately deal with the legal analysis of insurance obligatory conditions for tax advisors in Poland and the Czech Republic.

Krywan and Kurczewska (n.d.), have interpreted the compulsory insurance provisions in their study, creating a practical commentary. Other commentaries discuss the Tax Advisory Act, e.g. Stanek (2015) or Michalak (2013). The studies of the Polish National Chamber of Tax Advisors (Krajowa Rada Doradców Podatkowych) (NCTA1) have a similar nature. There are also studies that focus on the general subject of compulsory professional insurance, such as Božek (2013) or Kowalewski and Ziemiak (2013, p. 5). Jędrzejczyk and Weremczuk (2009) focused most extensively on the issue of tax advisors' liability, going beyond the scope of compulsory protection—they carried out analyses of additional insurance. One of these authors, Weremczuk (2019), analysed in his dissertation issues related to asymmetry information between tax advisors and insurance companies.

A similar situation exists in the Czech Republic. The Chamber of Tax Advisors of the Czech Republic (CTACR, n.d.) publishes guidance for tax advisors

concerning insurance. Other studies analysing the risks and how to hedge them, e.g. Kubíková (2018, p. 7 et seq.). Her work also assesses the suitability of voluntary insurance for tax advisors. The doctrine's interpretation of the rules can be found in the commentaries, e.g. Šefl and Neužil (2020).

The study contains many more Polish sources than Czech ones. This is because of the different constructions of the two products. In Poland, nearly the whole construction of the compulsory insurance for tax advisors is regulated by legislation. There are commentaries and studies that clarify their content. In the Czech Republic, only coverage is imposed. Insurance companies create their own General Terms and Conditions of Insurance. Consequently, there is not much elaboration on them.

For now, no professionals have explored the comparison subject of Polish and Czech regulations on compulsory insurance for tax advisors.

In both countries, there is the concept of introducing compulsory insurance due to altruistic and selfish factors (Wąsiewicz & Nowakowski, 1980, p. 95; Elišáková, 2019, p. 6 et seq.). The aim of the former is to protect socially significant values (desire to protect the life, health, or property of injured people and entities). Legislators often determine introduction of new liability insurance because of a desire to protect potential victims (Božek, 2013). Egoistic factors relate to protection of perpetrators. They often aim to maintain confidence in a particular professional group (Kliszcz & Piechula, 2003).

3. Policyholders and Subject Matter of the Insurance Tax Advisors' Insurance

3.1. Policyholders

In Poland, tax advisors are freelance professionals charged with public trust (Smarż, 2021), who are regulated by the Tax Advisory Act (Ustawa z dnia 5 lipca 1996 r. o doradztwie podatkowym; t.j. Dz. U. z 2020 r. poz. 130 z późn. Zm.). The conditions for obtaining a permit to practice this profession are high qualifications, the most important of which are completing 0.5–2 years of professional practice (depending on the place of practice), unpunishability, and passing the state examination (Bartosiewicz,

n.d.). Professional practice also comes with various responsibilities, which are regulated in art. 36-40 of the Tax Advisory Act. Each tax advisor has to respect professional secrecy and the law, behave ethically, regularly pay a membership contribution, securely store documents, and conclude a liability insurance contract. Compliance with these obligations is monitored by a professional body, the National Chamber of Tax Advisors.

Art. 2(1)(1-5) the Tax Advisory Act contains a catalogue of Tax Advisory Activities. These are providing advice, opinions, and explanations; bookkeeping and records; tax declarations preparation; representing clients in courts and before tax authorities; and independently performing audits of the tax. Finally, a tax advisor can be considered as a combination of the accountant, the financier, and the tax lawyer (National Chamber of Tax Advisors (NCTA2)).

The requirement to carry insurance is imposed by Art. 44(1) of the Tax Advisory Act. This obligation is a guarantee for customers and provides trading safety: the insurance company is a more secure source of funding for compensation. In Art. 43-44 of the Tax Advisory Act, there is a catalogue of entities obliged to provide insurance contracts for tax advisors. It can be divided into two groups: entities practising the profession and employers. The first group includes tax advisors practising the profession in their own name, on their own account, and in partnership, as well as authorised to provide tax advisory services to corporate entities.

The second group contains entities authorised to provide tax advisory services which employ tax advisors. These are:

- Professional organisations with legal personality, cooperatives, associations or chambers of commerce, where their statutory activities also include tax advice exclusively to their members.
- Authorised audit firms.
- Limited liability companies and public corporations, in which the majority of the management board is made up of tax advisors (in the case of two persons, at least one is an advisor); firms in which tax advisors have the majority of votes in the shareholders' meeting; firms in which the transfer of shares may take place with the approval of the board of directors. A public company has one additional condition—the shares must be registered.

- Professionals such as solicitors, barristers, and chartered accountants who do not have insurance dedicated to their profession and who employ tax advisors.

As the court judgement (I SA/Wr 1059/09) indicates, the obligation to insure is only imposed on the legal entity if it employs a tax advisor under an employment contract. Otherwise, (such as when employed on a contract or mandate), the obligation is incumbent on the tax advisor. This is because no interpretation other than the linguistic can be applied in this case. The legislator has clearly indicated that the regulation applies only to the employment relationship.

However, what is ambiguous in the judgement discussed above is the fact that the cost of insuring an individual tax advisor who is not employed under an employment contract can be recognised as a deductible cost for the company. The contentious issue here is in the inclusion of someone else's expenses as its own cost of revenue. On the one hand, there is a line of jurisprudence that prohibits such a practice (Judgements: I SA/Gd 607/16, II FSK 3785/17, II FSK 3661/16). On the other hand, on 28 July 2020, a ruling was issued by the Supreme Administrative Court which breaks from the line of case law and allows this practice (Judgement II FSK 3266/19).

Returning to those on whom the obligation has been imposed, additional insurance should be mentioned. However, it includes entities that are not obliged to take out insurance for tax advisors, but who must acquire supplementary insurance. This obligation exists pursuant to Art. 44a of the Tax Advisory Act. If entities from other EU countries want to operate in Poland and the terms and conditions of their insurance do not correspond to the Polish ones, they have to acquire supplementary insurance. Supplementary insurance is not the subject of this case and therefore it will be omitted in the study.

The National Chamber of Tax Advisors is a professionally self-governing entity to which every tax advisor must belong. It plays an important role in the conclusion of insurance contracts. It negotiated on 16 November 2015 the terms of the General Agreement Insurance with TuiR WARTA. The sum of 60,000 PLN has been negotiated. This is a group insurance in which NCTA acts as the policyholder. It is open to any tax advisor and is the legal entity authorised to provide tax advice if they employ up to 12 tax advisors and their turnover in the financial year preceding

the year of application did not exceed 5 million PLN (NCTA1).

This insurance guarantees extensive protection for ensuring trading certainty and to provide clients with more secure source of funding for compensation. The legislator wants to protect the weaker contractor from high damages. Therefore, the insured people, according to Art. 43(1) of the Tax Advisory Act, are the ones to whom the tax advisors delegate jobs, or with whose assistance they perform their activities. This is a statutory superfluum of Art. 474 of the Civil Code. That is intended to highlight the solemnity and important role played by this insurance in protecting the interests of the tax advisors' counterparts.

The debtors are liable for their own actions: for damage caused by the conduct or omission of people with whose assistance or to whom they entrusted performance of obligation. The fault exclusion condition of choice (Art. 429 in the Civil Code)—referral to a professional—does not apply here, as it only applies in tort liability, because tax advisors are liable to the client under the contractual liability regime. Liability for subcontractors and assistants arises from the principle of risk—culpability is irrelevant here (Niewęglowski, 2018, p. 59 et seq.). Tax advisors should control their actions to ensure that their conduct or omission will not cause harm to clients, because the tax advisor is responsible for them.

The insurance contains two exclusions for injured person (family) and policyholder (removal from the list). They are regulated in § 2(2)(1-2) of the Decree of the Minister of Finance on the general insurance conditions for tax advisors (2003) (Rozporządzeniem Ministra Finansów z dnia 4 grudnia 2003 r. w sprawie obowiązkowego ubezpieczenia odpowiedzialności cywilnej podmiotów wykonujących doradztwo podatkowe (Dz. U. Nr 211, poz. 2065)). Insurance does not cover damage to policyholder's family: spouse, ascendants, descendants, siblings, affinities in the same line, adoptees, or cohabitants. This is to counter fraud. The second exemption relates to causing harm after removal from the list of tax advisors. However, compensation must be paid if the damage occurred before the deletion. It is not relevant that the effects were discovered after the deletion.

3.2. Subject matter

According to § 2(1) of the Decree of the Minister of Finance on the general insurance conditions for tax

advisors (2003), this insurance covers the civil liability of tax advisors for damage caused by an act or omission. Activities which are insured are listed in Art. 2(1) of the Tax Advisory Act and have been described in detail previously. To recap, these are: providing advice on tax law, accountancy, filing returns, representing clients before courts and public administrations, and performing independent audit of the tax function.

The insurer's liability in this product is based on the "act committed" trigger. The insurance company is liable if the original cause of the loss, that is, an act or omission, occurred during the period of insurance (Dzięcioł, n.d.). This trigger makes it possible to claim damages in the case of contractual liability related to the business activity for up to three years—Art. 819(3) in conjunction with Art. 118 of the Civil Code. The time limit, according to Art. 120(1) of the Civil Code, begins to run when all the prerequisites for liability for damages are realised. As a result of this long time to report a claim, there is an obligation to set up IBNR loss reserves. This ensures the insurer's solvency (Pobłocka, 2017). This is the least favourable temporal coverage for insurance companies, but it is the best and provides the widest protection for the insured.

There are two exemptions in the subject matter, regulated in § 2(2)(3-4) the Decree of the Minister of Finance on the general insurance conditions for tax advisors (2003). The first concerns contractual penalties. Although contractual penalty replaces and performs similar function to compensation, the legislator has probably excluded it from insurance in order to prevent abuse. This is because a contractual penalty does not have to be necessarily adequate to the value of the damage. The second group of subject exclusions are public safety emergencies, following damages caused by acts of war, martial law, riots, civil commotion, and acts of terror. This is due to the fact that these harms are very expensive and carry high losses that may lead to insurance companies' insolvency.

3.3. Insured sum: historically and currently

Originally, the sum assured was dependent on revenues: § 12(2) of the repealed Decree of the Minister of Finance on the general insurance conditions for tax advisors (1997) (Rozporządzenia Ministra Finansów z dnia 18 lutego 1997 r. w sprawie ogólnych warunków obowiązkowego ubezpieczenia odpowiedzialności

cywilnej podmiotów wykonujących doradztwo podatkowe za szkody wyrządzone przy wykonywaniu czynności doradztwa podatkowego (Dz. U. Nr 17, poz. 91)) and § 10(2) of the Decree from 2001 (Rozporządzenia Ministra Finansów z dnia 12 lipca 2001 r. w sprawie ogólnych warunków obowiązkowego ubezpieczenia odpowiedzialności cywilnej podmiotów wykonujących doradztwo podatkowe (Dz. U. Nr 77, poz. 825)). The same values were present in both decrees, which are presented below.

The legislation changed on 29 July 2002, following the entry into force of another now repealed § 10(2) Decree (2002), at which time the sum of EUR 10,000 started to apply, which is still in force today. Currently, this sum is regulated by § 4(1-2) of Decree (2003). It relates to single events. The value is converted into PLN at the average exchange rate of the National Bank of Poland on the first business day of the given year in which the contract is concluded. The following table recalculates the value of the minimum sum assured.

Table 2 shows how the value of the sum assured changed between the years 2002 and 2023. The value peak was in the year 2004 (47,089 PLN) and the lowest in the year 2008 (35,975 PLN). The average value was 41,870 PLN. Analysing changes between the years 2002 and 2022, there was positive inflation in almost every year (negative inflation only appeared in the years 2015–2016). So the decreases in the value of the sum assured have been a negative phenomenon. Purchasing power parity was going down, so it would make economic sense to increase the value of the sum assured.

The amount of the guaranteed sum has a direct impact on the premium. Smaller entities, which usually have smaller business sizes, need less protection than large ones. Size of business usually influences the potential amount of damage. Therefore, it makes more economic sense to make sums assured, and let premiums depend on the size of business. It was also a good idea to estimate size of business by the amount of the revenue. If income had been used, it would not have been reliable—it would be reduced by costs. To sum up, the previous settlement of the sum in PLN was better, because it was not exposed to currency fluctuations. Furthermore, it also seems fairer to make it dependent on volume of business.

Another method of estimating the sum insured is to calculate it by a maximum potential loss of value. This approach involves evaluating the worst-case

Table 1. Sums guaranteed from 11 March 1997 to 2 July 2002

Sum assured	Revenues
5,000 PLN	0-50,000 PLN
10,000 PLN	50,001-100,000 PLN
15,000 PLN	100,001-150,000 PLN
20,000 PLN	150,001-200,000 PLN
25,000 PLN	200,001-250,000 PLN
30,000 PLN	250,001-300,000 PLN
35,000 PLN	> 300,000 PLN

Source: Author's own table based on § 12(2) of the repealed Decree of the Minister of Finance on the general insurance conditions for tax advisors (1997) and § 10(2) of the repealed Decree from 2001

Table 2. Guarantee sum of compulsory liability insurance for tax advisors

Year	Value in euro (EUR)	Euro (EUR) – zloty (PLN) exchange rate	Value in zloty (PLN)
2002	10,000	3.5496	35,496
2003	10,000	4.0095	40,095
2004	10,000	4.7089	47,089
2005	10,000	4.0778	40,778
2006	10,000	3.8610	38,610
2007	10,000	3.8279	38,279
2008	10,000	3.5975	35,975
2009	10,000	4.1721	41,721
2010	10,000	4.0924	40,924
2011	10,000	3.9622	39,622
2012	10,000	4.4640	44,640
2013	10,000	4.0671	40,671
2014	10,000	4.1631	41,631
2015	10,000	4.3078	43,078
2016	10,000	4.2935	42,935
2017	10,000	4.4157	44,157
2018	10,000	4.1701	41,701
2019	10,000	4.3016	43,016
2020	10,000	4.2571	42,571
2021	10,000	4.5485	45,485
2022	10,000	4.5889	45,889
2023	10,000	4.6784	46,784

Source: Author's own table based on § 10 ust. 2 of the repealed Decree of the Minister of Finance on the general insurance conditions for tax advisors (2003) and data of the National Bank of Poland (NBP)

scenario for a potential loss and estimating the value of that loss. However, this method of estimating the sum insured can be quite time-consuming and requires an individual approach for each insured party. Calculating the maximum potential loss of value requires an in-depth analysis of the insured's business. As a result, attempts to regulate insurance sums in this way would result in excessive over-regulation. It is difficult to estimate maximum damage values that would be appropriate for all operating businesses. Due to the complicated nature of this method, and its not being implemented in Poland or the Czech Republic's products, it is not considered for further analysis.

3.4. Insured sum: adequacy assessment

The existence of the products described below indicates weakness or disadvantage in basic protection. In addition to compulsory liability insurance, any tax advisor can conclude voluntary insurance agreements (Jędrzejczyk & Weremczuk, 2009):

- additional (an increase in the guaranteed sum of compulsory insurance),
- surplus (coverage of an additional guarantee amount, which is in excess of the guaranteed amount of the basic insurance),
- subsidiary (additional professional indemnity insurance),
- criminal-fiscal (paying the costs of a professional representative, expert opinions, court costs and fines).

The growing number of voluntary insurance plans shows that tax advisors are becoming increasingly aware that they need better protection. For an increasing number of businesses, the subject matter or sum assured is inadequate, causing them to search for additional protection. It is difficult to estimate how many entities have only basic protection. Assuming that additional, surplus, and subsidiary insurance contracts were not taken out by the same entity (due to similar coverage) between the years 2014 and 2017 consecutively, 2,144, 1,814, 1,678, and 987 entities consecutively had only basic protection. According to these estimates, the number of entities with only basic protection is declining. It may be that these remaining entities have such low business activity that they do not need more protection. However, the effect of their having only fundamental protection may also be a lack of awareness.

Table 3. Insurance contracts taken out by tax advisors

Insurance	2014	2015	2016	2017
Compulsory insurance	4,157	3,976	4,018	3,618
Additional insurance	879	952	1,089	1,341
Surplus insurance	269	301	243	211
Subsidiary insurance	865	909	1,008	1,079
Criminal-fiscal insurance	1,243	1,206	1,256	1,396
Total of voluntary insurance	3,256	3,368	3,596	4,027
Share of voluntary insurance in total	43.92%	45.86%	47.23%	52.67%

Source: Author's own table based on statistics of the Activity Report National Council of Tax Advisors 4th term (2014–2017) (NCTA3 p. 50 et seq.)

The activities of tax advisors are very risky and carry a high degree of responsibility. An example where basic protection was insufficient was when the tax advisor caused the loss of 375,294.60 PLN due to wrongly allowing certain expenses to be recognised as deductible costs (Judgement I Aca 994/14). The example shows that advisors can cause far more damage than the sum assured by the compulsory insurance.

In the year 2017 The National Council of Tax Advisors negotiated a mandatory insurance premium of 450 PLN (before 2017 it was 520 PLN). The sum insured can be increased to 200,000 PLN, with a surcharge of 130 PLN. Probably because of the additional payment, which costs 29% of basic protection, more and more tax advisors decided to increase it to 200,000 PLN. Additionally, experts can obtain discounts up to 30%. The cheapest offer they can get is 315 PLN and for an extended sum, 445 PLN.

Arguments for increasing the sum assured seem closer. Protection in the year 2023 is much weaker than in the year 2002, due to inflation. Premiums decreased by 14% in the year 2017, and after the full discounts obtained, the extended insurance package (sum assured up to 200,000 PLN) is cheaper than the basic one for an entity without discounts. In addition, tax advisor clients should have a secure source of funding for compensation, because it is a profession of public trust, and currently, the guaranteed sum of 46,784 PLN may not be sufficient. On the other hand, there are tax advisors who run small businesses, such as keeping tax books—in this example, the loss will

rarely be higher than the 10,000 EUR guaranteed amount. Therefore, the best solution would seem to be to create the sum depending on revenue. Smaller entities would then be able to stay with the current protection, which is sufficient for them, while larger tax advisors would be required to have insurance with a higher coverage amount.

3.5. Other construction elements

The obligation to conclude a civil liability insurance contract for tax advisors is set for the day before the day on which the Tax Advisory Activities are realised, according to § 3 of Decree of the Minister of Finance on the general insurance conditions for tax advisors (2003). Without insurance, tax advisors and other entities which have this obligation cannot practise their profession (Art. 44b of the Tax Advisory Act). Control is exercised by the Minister of Finance and the National Council of Tax Advisors (Krajowa Rada Doradców Podatkowych).

The sanction for not having a policy can even be delisting. An example of such a person was Marek P., who appealed to the administrative court after being deleted from the roll of tax advisor in 2006. However, the court upheld the deletion decision, pointing to the important role of insurance in providing guarantees and security (Judgement VI SA/Wa 216/07). There is now a more lenient regime. On 7 August 2010 the punishment regime was amended to introduce, in addition to deletion, three other possible penalties (warning, and reprimand suspensions from six months to three years; see Art. 64 sec. 1a-3 of the Tax Advisory Act). This doctrine postulates that this sanction group should also include financial penalties, as for a lawyer (Sadocha, 2015, p. 194). Additionally, the possibility of returning to the profession after disbarment is controversial. Tax advisors, according to Art. 6 sec. 1 p. 4 of the Tax Advisory Act, must be of impeccable character. This means that the harshest penalty for not having the insurance can even be indefinite expulsion from the profession.

Until 1 January 2004, according to § 5 sec. 2 of the repealed Decree of the Minister of Finance on the general insurance conditions for tax advisors (2002) (Rozporządzenie Ministra Finansów z dnia 24 lipca 2002 r. w sprawie ogólnych warunków obowiązkowego ubezpieczenia od odpowiedzialności cywilnej podmiotów wykonujących doradztwo podatkowe (Dz. U. Nr 120, poz. 1023)), there was a

rollover clause which automatically concluded a new contract at the end of the insurance period. Its aim was to increase the probability of uninterrupted insurance coverage. Currently, this provision has been repealed and automatic renewal of the insurance contract is no longer in force—in accordance with the current Decree of the Minister of Finance on the general insurance conditions for tax advisors (2003). Also in the past (§ 5 sec. 1 of the repealed regulation), a duration of one year was imposed on the insurance. Nowadays, it is arbitrary. It can be either short-term (up to one year) or long-term (more than one year). These arrangements depend on contractual provisions.

4. Compulsory Insurance for Tax Advisors in the Czech Republic

4.1. Policyholders

According to the definition in § 3(2) of Act no. 523/1992 (Zákon České národní rady o daňovém poradenství a Komoře daňových poradců České republiky), a *tax advisor* means a person registered in the list of tax advisors. This can be achieved by fulfilling the conditions concerning the profession in Act no. 523/1992: full legal capacity (§ 5(1)(a)), good repute and no criminal record (§ 5(1)(b) and (2)(a-b)), the pursuit of activities compatible with their profession (§ 5(1)(c) and (d)), higher education (§ 5(1)(e)) and passing an examination (§ 4(2)). Czech tax advisors may provide tax advice (that means representation of the client, economic and tax planning, and bookkeeping).

In the Czech Republic, there are three solutions for the obligation to enter into an insurance contract (Martinovičová, 2009, p. 143). These are: voluntary insurance, compulsory insurance with complex regulation of subject matter (e.g. employer's liability insurance for damages in case of an accident at work or occupational disease) and obligation insurance without regulation of its content (e.g. tax advisor liability (CTACR, n.d.)). With this solution, there are choices not only of insurance company but also coverage. This makes it necessary for each entity to assess its own risk.

The obligation to have insurance for tax advisors is introduced in § 6(10)(a) of Act no. 523/1992. These are people registered in the list of tax advisors (§ 3(2) Act no. 523/1992), tax advisory companies (§ 3(7) Act no. 523/1992). The obligation to enter into an

insurance contract is also imposed on employees who are tax advisors in tax advisory companies, despite their companies taking responsibility for them. Companies are fully liable for damage(s) caused to their client(s) by employees. Such broad regulations are presumably intended to provide some funding source for compensation in situations when employers do not enter into such agreements.

Tax advisors must finalize their insurance contract before starting to provide their services. They must be insured for the whole period in which they provide tax advice. If this obligation is not fulfilled, the Chamber of Tax Advisors of the Czech Republic (Komora daňových poradců České republiky) suspends the right to practise the profession until insurance contract is obtained (§ 8(1)(c) Act no. 523/1992). The personal coverage (insurance coverage) is the same for any insurance taken out for tax advisors.

Insurance is compulsory. However, it is only specified that it must be liability insurance for damages that could arise in connection with consulting on tax advice. Policyholders must choose their own suitable subject matter of coverage. The legislator was motivated by the fact that each tax advisor knows best what coverage they need. They need to know how to manage the risk to find suitable insurance, or use a broker to recommend perfect product.

Tax advisors can take offers from the framework agreement. The Czech Chamber of Tax Advisors with the insurance company Kooperativa have created the framework insurance agreement and the Framework General Insurance Conditions (CTACR, n.d.), as well. Tax advisors, as obligatorily members of the Chamber of Tax Advisors, can join the insurance group by individual contract. The insurance regulations can be found in four General Insurance Terms and Conditions – the Kooperativa T&Cs (this refers to the T&Cs of the framework agreement), the Kooperativa Professional Services T&Cs, VPP P-100/14 (general rules for all property insurance with definitions of basic terms, common exclusions and the obligations of the parties in the insurance contract), and ZPP P-600/14 (contains extension of subject matter). Absence of full regulatory coverage for tax advisors means that the rest of this study will be based on the Kooperativa product.

Insurance from Kooperativa has four exclusions:

- 1) Damage that involves the property of the insured, unless they were client of the preparator (Art. 2(1.8) Kooperativa T&C).

- 2) Damages caused to the nearest relatives (spouse, registered partner, relatives, or roommates living in a common household), but there were no siblings (Art. 2(1.10) and Art. 3(2)(b) Kooperativa T&C).
- 3) No authorisation to practice the profession (Art. 3(2)(f) Kooperativa T&C).
- 4) Damage to financially related entities (Art. 3(2)(g) Kooperativa T&C).

4.2. Subject matter

In accordance with Art. 2(1.4) Kooperativa T&C, insurance can cover damage arising in the Czech Republic or in Europe (it depends on individual arrangement). The scope of damages is very broad and includes several categories, so they will be presented in the table below for clearer analysis.

4.3. Insured sum: other construction elements

The sum assured is individually selected by each insured (Art. II(1.3) Kooperativa T&C). It can range from 1,000,000 CZK (with a deductible of 5,000 CZK) to 100,000,000 CZK (with a deductible of 10%, but a minimum of 5,000 CZK and a maximum of 50,000 CZK). The insurer, when concluding an insurance contract for a period of at least one year, provides compensation for all events in total up to the value of twice the insured sum. The sum insured can be increased during the insurance period, but it cannot be decreased. The details are below (Table 5).

After termination of the tax advisor's activities, for reasons not attributable to a breach of the law, the insured is covered by a "conservation insurance" (Art. III(1) of the Kooperativa T&C). It protects them after the end of the coverage period as long as the cause of damage(s) occurred during the term of the tax advisor's liability insurance. The premium of the "conservation insurance" is included in the tax advisor's liability insurance premium. The additional insurance lasts for five years. There is a difference in the case of suspension of activity (also for reasons that do not constitute a breach of the law)—this insurance can last for a maximum of three years and must be paid annually at 50% of the annual premium in the policy year, according to Art. III(2) of the Kooperativa T&C.

Table 4. Subject-matter coverage of compulsory liability insurance based on Kooperativa T&C, Kooperativa Professional Services T&C and ZPP P-600/14

Designation of the provision	Description - “the creation of an injury by...”
Basic protection from the Kooperativa T&C	
Article II(1.5)(a)	performance by the insured employee
Article II(1.5)(b)	tax advice or representation of the client
Article II(1.5)(c)	service of social and health insurance
Article II(1.5)(d)	accounting activities, which are provided together with tax advisory services
Article II(1.5)(e)	advising on company transformation and liquidation
Article II(1.5)(f)	issuing of opinions
Article II(1.5)(g)	conducting foreign litigation
Article II(1.5)(h)	representations before courts
Article II(1.5)(i)	checks on the client’s legal status as regards accounts
Article II(1.5)(j)	imposing sanctions on the customer
Article II(1.5)(k)	further damage caused by the initial damage
Article II(1.5)(l)	incorrect application of the rules
Article II(1.5)(m)	miscalculations
Article II(1.5)(n)	failure to comply with the time limits set by law, court or authorities
Article II(1.5)(o)	carrying out free trade in services of an administrative and organisational nature that are performed with tax consultancy services
Article II(1.6)	violation of personal, legal and professional secrecy with an additional limit of up to 1,000,000 CZK
Article II(1.7)	a defect in the services provided, relating to non-compliance with international accounting standards
Article II(1.9)	the tax advisor’s activities as an employee towards his employer
Article II(1.11)	fraud perpetrated by an employee, unless the insured was acting in concert with the employee, up to a limit of 100,000 CZK for basic insurance and up to a maximum of 5,000,000 CZK for extended packages.
Primary protection with ZPP P-600/14	
Article 1(2) a-c	causing injury to a person (compensation, reimbursement of funeral expenses, payment for lost potential benefits, etc.)
Article 1(3)(a-b)	destruction, loss of or damage to property
Article 1(4)(a-b)	causing the death of an animal or maiming it (payment for the lost potential benefit that the animal could have brought, reimbursement of medical expenses)
Article 1(5)(a-b)	causing damage to health - incurring paid medical expenses for the injured person
Article 1(6)	destruction of the property in which tax advice is provided, insofar as there is an obligation to repair it (e.g. a lease agreement); this does not apply to property which belongs to the insured person
Article 1(8)	a defect in the service provided
Legal expenses insurance	
Article II(7) of the Kooperativa T&C, Article 1(7) and 7 ZPP-600/14, Article 6 ZPP P-610/14	the occurrence of the costs of the indemnity proceedings (if they were necessary to establish the insured’s obligation to pay the indemnity or the amount thereof), defence in criminal proceedings, and legal representation

Table 4. Subject-matter coverage of compulsory liability insurance based on Kooperativa T&C, Kooperativa Professional Services T&C and ZPP P-600/14

Designation of the provision	Description - "the creation of an injury by..."
Possible extension of protection from the Kooperativa T&C	
Article II(2.1-2.2)	carrying out financial audits, financial audits in accordance
Article II(2.3)	accounting activities that are provided without tax advice
Article II(2.4)	preparation of financial expertise and business advice
Article II(2.5)	destruction or loss of items entrusted by the customer, e.g. theft (the limits for loss of cash are 10,000 CZK and for loss and destruction of other items 1,000,000 CZK)
Article II(2.6)	Improper performance of expert activities, a limit of between 1,000,000 CZK and 10,000,000 CZK can be selected in this category
Exclusions from the subject matter from Kooperativa T&C	
Article II(1.6)(a-b)	damage caused by insult, defamation or sexual harassment and abuse
Article II(5)	damage to the insured (however, this only applies to the tax advisor's liability insurance, because this insurance is purchased in a package (group of insurance), which includes the repair of damage to the insured in its scope, as will be discussed below)
Article II(5)(b-c)	incorrectly operating bank accounts and mistakes in bank transfers
Article II(5)(d-e)	fraud done by the insured

Source: Authors' own table based on Kooperativa T&C, Kooperativa T&C for Professional Services and ZPP P-600/14

Table 5. Tariff of insurance rates in CZK

Sum assured (deductible)	Maximum revenue of security seeker for the most recent accounting period (in case of commencement, the estimated revenue for current year is used)				
	500,000	1,000,000	3,000,000	5,000,000	10,000,000
	Insurance premium				
1,000,000 (none)	2,900	2,900	2,900	2,900	2,900
2,000,000 (none)	8,470	10,430	15,260	19,390	26,140
3,000,000 (none)	9,810	12,080	17,680	23,300	28,610
5,000,000 (none)	14,600	17,970	24,130	30,600	37,460
10,000,000 (none)	21,050	25,960	32,240	40,560	48,890
20,000,000 (10%, but min. 10,000 CZK, max. 100,000 CZK)	33,250	39,670	44,055	54,350	62,280
20,000,000 (10%, but min. 5,000 CZK, max. 50,000 CZK)	39,900	47,610	52,860	65,430	74,700
30,000,000 (10%, but min. 10,000 CZK, max. 100,000 CZK)	51,890	57,700	63,650	71,320	79,950
30,000,000 (10%, but min. 5,000 CZK, max. 50,000 CZK)	60,680	65,200	70,230	77,100	85,620
40,000,000 (10%, but min. 15,000 CZK, max. 150,000 CZK)	None	70,630	73,100	81,780	91,555
40,000,000 (10%, but min. 5,000 CZK, max. 50,000 CZK)	None	77,650	80,990	89,230	98,560
50,000,000 (10%, but min. 15,000 CZK, max. 50,000 CZK)	None	93,150	98,760	106,140	117,560
5,000,000 (10%, but min. 5,000 CZK, max. 50,000 CZK)	None	102,660	112,000	119,650	128,020
70,000,000 (10%, but min. 15 000 CZK, max. 150,000 CZK)	None	117,690	122,710	132,020	146,980
70,000,000 (10%, but min. 5 000 CZK, max. 50,000 CZK)	None	128,470	134,850	145,350	159,990
100,000,000 (10%, but min. 15,000 CZK, max. 150,000 CZK)	None	145,960	150,540	160,210	174,050
100,000,000 (10%, but min. 5,000 CZK, max. 50,000 CZK)	None	156,620	161,250	173,290	188,880

Source: Author's own table based on Annex 1 to the Framework Agreement

Table 6. Comparison of entities obliged to conclude an insurance contract

Entity	Is there insurance obligation in Poland?	Is there insurance obligation in the Czech Republic?
Tax Advisor providing services on his own name and for his own account	Yes	Yes
Tax Advisor in partnership	Yes	Yes
Professional organisations, cooperatives, associations and chambers of commerce whose statutory activity is tax advice	Yes	No
Audit firms	Yes	No
Limited liability companies, with the majority of board members being tax advisors	Yes	Yes (tax advisory company)
Lawyers, legal advisors, and chartered accountants if they employ tax advisors and have not taken out professional indemnity insurance for their profession	Yes	No
Employee of a company that provides tax consultancy services	No	Yes

Source: Author's own table based on the Tax Advisory Act and Act no. 523/1992

This undermines the existence of the “act committed” trigger. It also covers damage, the cause of which occurred during the period of insurance, but resulting consequences that only appear after the period of insurance. In consequence, in this author's opinion, there should be no additional payment for it.

As mentioned above, the compulsory insurance under the framework agreement is purchased packaged with other insurance. The package includes insurance against natural disasters (fire, flooding, atmospheric fallout, and others) and insurance against theft and vandalism, in accordance with Art. II(4) of the Kooperativa T&C. Moreover, not only the office is protected but also the house. Office equipment and documentation in office are insured for a coverage amount of 200,000 CZK, while household items and documentation located at home are insured for 100,000 CZK. The deductible for each of these is 1,000 CZK. This solution is very advantageous for insured people because, with the same amount of premium, additional protection is acquired.

5. Comparison of Polish and Czech Solutions

5.1. Policyholders comparison

The obligation of having insurance coverage in both countries is generally the same: it covers entities

providing tax advice. They should protect the assets of those who provide such services against claims for errors causing loss to clients. On the other hand, they are intended to provide a better source of compensation funding for contractors. Differences arise in detailed regulations for imposing obligation on specific entities, which will be shown in the table below.

The Polish legislator regulates much more precisely the list of entities on which obligation to have this insurance has been imposed. The Polish catalogue extends, in comparison to Czech one, obligation to professional organisations, cooperatives, associations and chambers of commerce whose statutory activity is tax advice, as well as audit companies. In Poland, in the case of employees who are tax advisors and are employed by lawyers, legal advisors, or auditors, this obligation is placed on their employer. In the Czech Republic, it is the other way around—employees are obliged.

The Polish insurance additionally covers entities with whose assistance a tax advisor provides their services. This is due to the fact that a tax advisor is liable for actions of their assistants. On the contrary, there is no such regulation in the Act no. 523/1992. These issues are specified in insurance contracts and general contractual conditions. According to the Kooperativa T&C, errors committed by an employee of tax advisor are also covered, as part of the basic insurance.

In both countries, damages that consist of harm to assets of the next of kin have been excluded.

Another shared exclusion relates to damage caused by this insured after loss of the right to practice their profession. On the other hand, in the Czech Republic regulations is another exclusion that is not present in the Polish regulations: the insurer will not pay compensation to legal entities that are financially related to the insured.

5.2. Subject matter comparison

In the Polish insurance, the subject matter is regulated very broadly. It covers civil liability for damage caused by act or omission in the course of carrying out advisory activities. The coverage of Czech insurance is much more specified: a large number of precise situations are listed. Therefore, in order to compare the two products, the subject matter of the Polish insurance

will be compared to the Czech one and additionally, subject matter exclusions will be compared.

Exclusions in Poland include payment of contractual penalties and states of public safety. In the Czech Republic, damages caused by insult, defamation, or sexual harassment and abuse are excluded. In the case of the Polish product, the intentionality of such an act will most often be demonstrated, so this will also not be covered. In the Kooperativa T&C, errors involving incorrect handling of bank accounts and mistakes in bank transfers are additionally excluded.

5.3. Tariff of premiums and other comparisons

In comparing other structural elements, it should be mentioned that Czech insurance is always offered in the insurance package, which protects the assets of the

Table 7. Comparison of subject-matter

Basic protection from Kooperativa T&C - "occurrence of damage by..."	Is such damage covered by insurance in Poland?
performance by the insured employee	Yes
tax advice or representation of the client	Yes
service of social and health insurance	Yes
accounting activities, which are provided together with tax advisory services	Yes
advising on company transformation and liquidation	Yes
issuing of opinions	Yes
conducting foreign litigation	Yes
representations before courts	Yes
checks on the client's legal status as regards accounts	Yes
imposing sanctions on the customer	Yes
further damage caused by the initial damage	Yes
incorrect application of the rules	Yes
miscalculations	Yes
failure to comply with the time limits set by law, court or authorities	Yes
carrying out free trade in services of an administrative and organisational nature that are performed jointly with tax consultancy services	Not
violation of personal, legal and professional secrecy with an additional limit of up to 1,000,000 CZK	Yes (limit as for others up to 10,000 EUR)
a defect in the services provided, relating to non-compliance with international accounting standards (IAS, IFRS, SKIIFRIC, IASB, and ISA).	Yes
the tax advisor's activities as an employee towards his employer	Not
fraud perpetrated by an employee, unless the insured was acting in concert with the employee, up to a limit of 100,000 CZK for basic insurance and up to a maximum of 5,000,000 CZK for extended packages.	Yes

Continued **Table 7.** Comparison of subject-matter

Primary protection with ZPP P-600/14	Is such damage covered by insurance in Poland?
causing injury to a person (compensation, reimbursement of funeral expenses, payment for lost potential benefits, etc.)	Yes
destruction, loss of or damage to property	Yes
causing the death of an animal or maiming it (payment for the lost potential benefit that the animal could have brought, reimbursement of medical expenses)	Yes
causing damage to health - incurring paid medical expenses for the injured person	Yes
destruction of the property in which the tax advisory services are provided, insofar as there is an obligation to repair it (e.g. a lease agreement); this does not apply to property which belongs to the insured person	Only if it is the client's property
a defect in the service provided	Yes
Legal expenses insurance	Is such damage covered by insurance in Poland?
the occurrence of the costs of the indemnity proceedings (if they were necessary to establish the insured's obligation to pay the indemnity or the amount thereof), defence in criminal proceedings, and legal representation.	Yes
Possible extension of protection from the T&C Kooperativa	Is such damage covered by insurance in Poland?
carrying out financial audits, financial audits	Yes
accounting activities that are provided without tax advice	Yes
preparation of financial expertise and business advice	Yes
destruction or loss of items entrusted by the customer, e.g. theft (the limits for the loss of cash are 10,000 CZK and for the loss and destruction of other items 1,000,000 CZK)	Yes
Improper performance of expert activities	Yes

Source: Author's own table based on the Tax Advisory Act, Kooperativa T&C, Kooperativa T&C for Professional Services and ZPP P-600/14

tax advisor, which is very beneficial. Unfortunately, such an offer could not be negotiated in the second country. In Poland tax advisors need not pay a contribution if they suspend their activity. In the Czech Republic, in this situation, they have to pay 50% of the regular premium.

In Poland, the sum assured is 10,000 EUR at a premium of 450 PLN (98.19 EUR (all conversions for 2 January, 2023)) (after a discount of 315 PLN (67.33 EUR)), while the lowest possible sum assured in the Czech Republic, according to Kooperativa's product, is 1,000,000 CZK (41,000 EUR) at a premium of 2,900 CZK (118.90 EUR). Czech tax advisors for 20.71 EUR get a higher insurance sum of 31,000 EUR. In conversion per 1 EUR of the guarantee sum, it costs 0.98 PLN in Poland and 0.29 CZK in the Czech Republic. The lowest value of the sum assured in the Czech Republic is closer to the extended version of the

Polish insurance: up to 200,000 PLN (42,749.66 EUR) (which is about 104.27% of the Czech one) for 580 PLN (123.97 EUR). This costs 0.29 cents per 1 EUR of protection. Two products then compare exactly equally and favourably.

In the Czech Republic, there is a doubling of the sum assured if the entity enters into the insurance contract for at least one year, whereas in Poland, a longer insurance period does not increase the sum. The Polish insurance is much broader despite the lower guaranteed sum, as it relates to one event. In the Czech Republic, the guaranteed sum relates to all events, so it can be exhausted more quickly.

From a tax advisor's point of view, the advantage of the Czech product is that each policyholder can select protection according to their business size, clients, and other needs. In Poland, there is also the possibility of extending protection by means of liability insurances,

which are voluntary, but there is no reducing the possibility of this guaranteed sum. There are better solutions for clients in Poland, where the minimal sum insured has been introduced—it seems to be more favourable. Clients are assured that entities in search of the cheapest insurance will not acquire illusory insufficient protection. The basic insurance premium in the Czech Republic is more than three times cheaper than in Poland. On the other hand, extended protection in Poland costs as much as the Czech basic insurance, compared to every euro of both insurance sums. By contrast, the minimal guaranteed sum in the Czech Republic with the Kooperativa T&Cs starts at 41,000 EUR, which is more than four times the Polish mandatory insurance.

Taking into consideration the value of the lack of minimal guaranteed sums and the additional insurance package, the product in the Czech Republic seems to be better for tax advisors. From the clients' point of view, the Polish conditions are better, because in the Czech Republic they do not have minimal level of protection.

6. Conclusion

The article presents the previously unexplored topic of the comparison of compulsory insurance for tax advisors in Poland and the Czech Republic. Analysing Polish regulations, it can be concluded that the changes introduced were unfavourable. Previously, the compulsory liability insurance for tax advisors had a rollover clause, but this provision has now been repealed. It was an important element from clients' point of view. That provided more secure source of funding compensation, in case tax advisors did not take out another insurance contract.

Nowadays, there is no longer any dependence on the guaranteed amount on revenues, but there is one minimal guarantee amount for all entities of 10,000 EUR. After appropriate conversion to current purchasing power of money, it would be preferable to return to create the sum assured depending on the value of last year's revenues. Smaller businesses need less protection and larger ones should have higher sums assured.

Another offer that should be introduced is to change the value in which the minimal guarantee amount is expressed—currently 10,000 EUR. A negative example is the decrease in the sum assured in

the following years. In the author's opinion, it would be much better to express this value in legislation using the Polish zlotys, due to currency fluctuations. The guaranteed sum of 10,000 EUR in 2002 was much stronger protection than today, due to the decrease in the value of money. A new method of estimating the insured sum should be updated annually by an inflation ratio.

There are different regulations in the Czech Republic than in Poland. Insurance for tax advisors is compulsory, but the Czech legislator does not regulate its content; only the subject and the period of insurance are regulated. It is also specified that the insurance must cover civil liability for damages that may arise during the provision of tax advice. Other elements of the insurance and its detailed coverage are regulated individually by each insurance company. Tax advisors in the Czech Republic need to manage their risks much better in their search for adequate protection.

In Poland, more entities have been obliged to sign the contract. In addition, the insurance always protects employees (which is not standard in the Czech Republic). There are also fewer subject exclusions, which also indicates that the protection of tax advisors is stronger. The subject matter of both products are almost the same, with some exceptions. The scope of protection provided to the client in Poland is broader, while in relations between the employer and the employee, the Czech solutions are more favourable.

Analysing the other design elements, the Czech product is more flexible. It can be better adapted to the type of services offered and the size of business by choosing the appropriate amount of the guaranteed sum and specific coverage. In Poland, such choice is only provided by the binding of additional insurance contracts. The Kooperativa insurance is always offered in an insurance package, which protects the tax advisor's assets for the same premium. In Poland, there is no obligation to pay the 50% value of the premium if activity is suspended.

Taking all elements of insurance into consideration, Polish insurance offers better protection. Customers can be assured each entity has identical minimal conditions of compulsory insurance, which will protect them in the same way. Such confidence does not exist in the Czech Republic. However, Czech insurance seems to be much more beneficial for tax advisors due to the possibility of selecting appropriate guaranteed amounts.

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